RECENT DECISIONS

ADMINISTRATIVE LAW—EXCLUSION FROM SECOND CLASS MAIL—ESPIONAGE ACT.—The second class mail privilege of the relator was suspended for violations of the Espionage Act. The relator sued out a writ of mandamus against the Postmaster General praying that the privilege be restored. *Held,* Messrs. Justices Brandeis and Holmes dissenting, for the defendant. *U. S. ex. rel. Milwaukee etc. Publishing Co.* v. *Burleson* (1921) 41 Sup. Ct. 352.

Publications which answer certain formal requirements are classified as periodicals or newspapers, and are then entitled to second class mail privileges. (1879) 20 Stat. 359, U. S. Comp Stat. (1916) §§ 7304, 7306. By the provisions of the Espionage Act any mail containing seditious matter, as defined by that act, is denied the use of the mails. (1917) 40 Stat. 230, U. S. Comp. Stat. (Supp. 1919) § 1040la. The Postmaster General has no power to regulate the mails except that granted by statute. *Payne* v. *U. S. ex. rel. National Ry. Publisher Co.* (1902) 20 D. C. App. 581; *aff'd* (1904) 192 U. S. 602, 24 Sup. Ct. 849. The Espionage Act entitles the Postmaster General to reject each issue containing seditious matter from the mails altogether; but, there being no specific grant of authority to suspend the second class privilege, the Postmaster General seemingly exceeded his powers. This would accord with the opinions of the Attorney General. (1890) 19 Op. Atty. Gen. 667; (1908) 26 Op. Atty. Gen. 555, 565. Having satisfied the formal requirements which made it a newspaper, the relator, if entitled to the use of the mails at all, was entitled to the second class privilege, and by the suspension of this privilege there was an unjust discrimination in favor of other members of its class, and the privilege should have been restored.

ADMINISTRATIVE LAW—VALIDITY OF FEDERAL STATUTE IMPOSING DUTY UPON STATE OFFICIAL.—A writ of prohibition was applied for to restrain trial of a city police officer for agreeing to receive a bribe and not to make an arrest under the National Prohibition Law. *Held,* under U. S. Comp. Stat. (1916) § 1674 the petitioner could be placed under a legal duty to arrest violators of the National Prohibition Law. He could therefore be guilty of accepting a bribe. The writ will therefore be discharged. *Harris* v. *Superior Court* (Cal. 1921) 196 Pac. 895.

Within their respective spheres the federal and state governments are independent. See *Smith* v. *Short* (1867) 40 Ala. 385, 387. Thus Congress has no general power to enact police regulations operative within a state, *Ex parte Guerra* (Vt. 1920) 110 Atl. 224; nor to legislate as to what shall be evidence in a state court, see *Crews* v. *Farmers' Bank of Va.* (Va. 1879) 31 Grat. 348, 355; nor to provide punishment for violations of state laws justiciable only in the state court. *Butterfield* v. *United States* (C. C. A. 1917) 241 Fed. 556. Congress may impose no duty upon state officials. *Hoxie* v. *New York, N. H. & H. R. R.* (1909) 82 Conn. 352, 73 Atl. 754; *Rushworth* v. *Judges of Inferior Court of Common Pleas* (1895) 58 N. J. L. 97, 32 Atl. 743; *contra, Levin* v. *United States* (C. C. A. 1904) 128 Fed. 826; *Ex parte Rhodes* (1817) 12 Niles Weekly Register 264. A *contra* rule would permit overburdening state officials so as to render impossible the proper functioning of the state government. *Cf. The Collector* v. *Day* (1870) 78 U. S. 113, 125. But it is convenient for the federal government to be able to utilize such functionaries. Therefore some courts dodge the issue and hold that Congress may authorize the official to act as an individual. *Eldredge* v. *Salt Lake County* (1910) 37 Utah 188, 106